IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 21000 of 2004

Between:

1. M.Viswanadham, S/o.M.Mallaiah,
aged 52 years, Occ:Ex-Employee of SBI,

R/o.Plot No.38, Bharathi Avenue,
Old Bownpally, Secunderabad.
2. K.Neelakanta Rao, S/o.Late Venkata Ramanayya,
aged 55 years, Occ:Ex-Employee of SBI,

R/o.R.P.Road, (Bible House), Secunderabad.

.... PETITIONERS

AND

1. Appellate Tribunal for Foreign Exchange,
4th floor, 'B'Wing, Janpath (INDIAN OIL Bhavan),
New Delhi-110001, represted by its Registrar.
2. The Assistant Director Enforcement,
Directorate of Enforcement, III floor,
Damayanthi Chambers,
Adarsh Nagar, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction, especially one in the nature of Mandamus: (i) declaring that the order dated 21-9-2004 made in appeal Nos.428/03 and 429/03 of

appellate tribunal for foreign exchange, New Delhi, is illegal, void, and without jurisdiction besides being arbitrary and set aside the same: (ii) to declare that no power is vested with the appellate tribunal to alter/vary any order passed earlier by the appellate tribunal after hearing both sides.

Counsel for the Petitioners: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 and 2: MR.ARAJASHEKAR REDDY (STANDING COUNSEL FOR CENTRAL GOVERNMENT)

The Court, at the stage of admission, made the following:

O R D E R:(Per Hon'ble Sri Justice B.Sudershan Reddy)

We have heard the learned counsel for the petitioners and the learned Standing Counsel appearing on behalf of the Central Government. At their request, the matter is taken up for disposal at the stage of admission. Rule nisi.

The Appellate Tribunal for Foreign Exchange vide its order, dated 24-11-2003, having heard both the parties, passed orders waiving
pre-deposit of penalty on the condition that the matter will be taken up on merits for hearing on 10.12.2003. The said order was passed after the counsel appearing on behalf of the Department expressed no objection to waive the condition of pre-deposit.

It is stated in the affidavit filed in support of the writ petition and submitted during the course of hearing of the writ petition before us by the learned counsel for the petitioners that on 10.12.2003, the counsel for the appellant was ready to go ahead with the hearing of the appeal, but the same did not reach. The fact remains that the matter underwent several adjournments.

On 21.09.2004, the impugned order was passed by the appellate Tribunal directing the petitioners herein to make pre-deposit of 60% amount of penalty in respective cases within a period of 60 days from the date of order. This order is challenged by the petitioner on the ground that the Tribunal, without any reason and justification, varied its order, dated 24.11.2003. It is submitted that the petitioners at all times were ready to proceed with the hearing of the appeal, but the appeals could not be heard for the reasons not attributable to the petitioners and their counsel. The impugned order does not disclose that the petitioners and their counsel were not ready for

hearing and disposal of the appeals. In the circumstances, the interim order granted on 24.11.2003 could not have been varied to the disadvantage of the petitioners herein, which undoubtedly had resulted causing some prejudice to the petitioners.

In the circumstances, the impugned order is set aside. The order, dated 24.11.2003, shall stand revived. The appeals shall be taken up for hearing by the Appellate Tribunal for Foreign Exchange on 13.12.2004 for hearing and disposal. Learned counsel for the petitioners undertakes that no adjournment shall be sought for by the petitioners and they shall proceed with the hearing of the appeal. It is needless to observe that the appeals shall be heard on their own merits uninfluenced by the observations, if any, made in this order, since such observations made are confined for the purpose of disposal of the matter at the interlocutory stage.

The writ petition shall accordingly stand allowed without any order as to costs.

_____

B. SUDERSHAN REDDY, J.

Date: 30-11-2004

_____

T. CH. SURYA RAO, J.

Note: Furnish C.C. by 02-12-2004

(B/o)

GS/PVKS

-

-

To

1. The Registrar, Appellate Tribunal for Foreign Exchange,

4th floor, 'B'Wing, Janpath (INDIAN OIL Bhavan),
New Delhi-110001.
2. The Assistant Director Enforcement,
Directorate of Enforcement, III floor,
Damayanthi Chambers, Adarsh Nagar, Hyderabad.

3. 2CD copies